

COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) INCOME TAX APPEAL NO.25 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Hughes Everett

..... **Respondent**

(2) INCOME TAX APPEAL NO.26 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Miller Robert

..... **Respondent**

(3) INCOME TAX APPEAL NO.27 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Castro Jorge Valerio

..... **Respondent**

(4) INCOME TAX APPEAL NO.28 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Beigel Hans Jurgan

(5) INCOME TAX APPEAL NO.29 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Johnson Robert

..... **Respondent**

(6) INCOME TAX APPEAL NO.30 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Miller Robert

..... **Respondent**

(7) INCOME TAX APPEAL NO.31 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Diola Noe C.

..... **Respondent**

(8) INCOME TAX APPEAL NO.32 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Nakrst Franci

..... **Respondent**

(9) INCOME TAX APPEAL NO.33 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Rose Cooper Charles

..... **Respondent**

(10) INCOME TAX APPEAL NO.34 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Nagbanua Rogelio

..... **Respondent**

(11) INCOME TAX APPEAL NO.35 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Davies Jack Elbert

..... **Respondent**

(12) INCOME TAX APPEAL NO.36 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle,
Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Marcelino Junio

..... **Respondent**

(13) INCOME TAX APPEAL NO.37 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Lea Kea Yul

..... **Respondent**

(14) INCOME TAX APPEAL NO.38 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Garcia Cirilio Escarez

..... **Respondent**

(15) INCOME TAX APPEAL NO.39 OF 2006

1. The Commissioner of Income Tax, Dehradun
2. Dy. Commissioner of Income Tax, Special Circle, Dehradun.

..... **Appellants**

Versus

M/s Tide Water Marine International Inc.
As agent of Mr. Diola Noe C.

..... **Respondent**

Sri Pitamber Maulekhi, learned standing counsel for the appellants

Dated: February 20, 2006

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.**

Per Hon'ble P.C. Verma, J.

All these bunch of appeals have been preferred by the Deputy Commissioner of Income Tax, Dehradun. The relevant income tax assessment years in all these appeals are 1996-97-, 1997-98 and 1998-99.

2. Brief facts of the case giving rise to all these appeals are that no return was filed by the assesses in the relevant assessment years within the time prescribed for, however the returns were filed in the year 2000. The Assessing Authority found them to be beyond time. Thereafter, a notice under Section 148 of the Income Tax Act, 1961 (*hereinafter will be referred to as the Act*) was issued on 13.02.2001. In response to the notice, the assessee submitted that the return filed may be treated as compliance to the said notice. The notices under Section 143(2) and Section 142(1) of the Act were also issued. In response to these notices, the submissions were filed on various dates. The Assessing Officer assessed the total income and imposed the tax and also passed the order to initiate the penalty proceedings under Section 271(1)(C) of the Act. The Assessing Officer levied a penalty at the rate of 100% on tax sought to be evaded by the assessee. The assessee preferred an appeal against the Assessment Order before the Commissioner (Appeals). The Commissioner (Appeals) also dismissed the appeal of the assessee, however the detailed order passed by the Commissioner (Appeals) is not available on record. Learned standing counsel for the Revenue also fairly conceded this fact. Against the dismissal order of the Commissioner (Appeals), the assessee filed appeals before the Income Tax Appellate Tribunal (ITAT). The Tribunal decided all these appeals by one and a common judgment, therefore, all these appeals here are also being disposed of by one and a common judgment.

3. It is not disputed that the notice under Section 148 of the Act was issued on 13.02.2001.

4. Sub-section (3) of Section 149 of the Act Prescribes the period for assessment or re-assessment or re-computation to be made in pursuance of the notice under Section 148 of the Act. Sub-section (3) of Section 149 of the Act also prescribes that the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year in case a person on whom a notice is to be served as a person treated as the agent of a non-resident under Section 163 of the Act.

5. In all these appeals the respondents are the agents under Section 163 of the Act and the relevant assessment years are 1996-97, 1997-98 and 1998-99 and notices were issued on 13.02.2001 under Section 148 of the Act, therefore the notices were issued beyond the time prescribed by Sub-section (3) of Section 149 of the Act. Thus, the order passed by the Assessing Authority was void *ab initio*. Hence, the Tribunal has rightly held that the penalty imposed under Section 271(1)(C) of the Act vide the assessment order is also null and void.

6. In view of the aforesaid facts and in our opinion no substantial question of law arises for consideration in all these appeals.

7. Therefore, all the appeals are devoid of merit and are dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.) (P.C. Verma, J.)
20.02.2006 20.02.2006